

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

In the Matter of)	
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
)	
National Association of State Utility)	
Consumer Advocates' Petition for Declaratory)	CG Docket No. 04-208
Ruling Regarding Truth-in-Billing.)	

**COMMENTS OF THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI**

The Public Service Commission of the State of Missouri ("MoPSC") offers the following comments in response to the Federal Communication Commission's ("Commission") *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking* ("Order" or "FNPRM") released on March 18, 2005.¹ The Commission found it necessary to issue the FNPRM "to garner as complete and up-to-date a record as possible" on the role of states in regulating billing and to seek comment on such things as billing of government mandated and non-mandated charges, combining federal regulatory charges in line items and point of sale disclosure requirements.

Before addressing the specific concerns raised by the Commission, the MoPSC would like to state that the most important objective of any modifications to the truth-in-billing rules is to provide customers with sufficient and viable information so that they can make informed decisions when comparing telecommunications services. The majority of the MoPSC,

¹ *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, 20 FCC Rcd 6448, FCC 05-55, adopted March 18, 2005.

notwithstanding the Commission's limited NPRM, still believes it in the public interest that all surcharges and fees beyond a disclosed monthly charge and government authorized or mandated charges should be eliminated. If the Commission allows line item surcharges to continue, clear and complete disclosure of all charges, but specifically discretionary charges, is paramount if consumers are to reap the advantages of competition.

I. Billing of Government Mandated and Non-Mandated Charges

In the National Association of State Utility Consumer Advocates ("NASUCA") Petition² which prompted the Commission's Second Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, NASUCA states, "A principal goal of the federal telecommunications laws is to ensure that the charges carriers, both wireline and wireless, impose on consumers for telecommunications services are 'just' and 'reasonable.'" NASUCA continues, "In its 'Truth-in-Billing' ('TIB') docket the Commission undertook to prescribe carrier practices to help consumers avoid falling prey to unscrupulous telecommunications carriers who hid or mislabeled unauthorized charges on consumers' telephone bills. In its 1999 Order in the TIB docket, the Commission adopted principles and guidelines to provide consumers with basic information they need, both to make informed choices in a competitive telecommunications market and to protect themselves from unscrupulous competitors." Unfortunately, many carriers charge line item fees and surcharges, purporting to recover various regulatory, administrative and/or government mandated costs. As one Missouri consumer recently commented to the MoPSC, "When I query the phone company about the fees and taxes, they maintain they are imposed by State and Federal governments and there is nothing they can do about it. What is unclear is how much is truly tax and how much is routine cost-of-business

² Petition for Declaratory Ruling, filed by National Association of State Utility Consumer Advocates (March 30, 2004).

expense.”³

The FCC’s truth-in-billing rules require customer bills to be clear and require all charges to be conspicuously displayed on the bills. The rules also require companies to provide a description of all charges that appear on the bill. Despite this attempt to make telecommunications bills easier to understand, the bills can become confusing to customers when they contain added line-item charges. The Commission specifically denied NASUCA’s request for a Declaratory Ruling prohibiting telecommunications carriers from imposing any line items or charges that have not been authorized or mandated by the government noting there is no general prohibition against the use of line items on telephone bills under Commission rules or the Act.⁴ Therefore, the Commission seeks input on defining the distinction between mandated and non-mandated charges for truth-in-billing purposes, and offers a few suggestions for consideration.

First, the Commission suggests “mandated” charges could be defined as amounts carriers are required to collect directly from customers and remit to federal, state or local governments. In contrast, “non-mandated” charges could be defined as governmentally authorized but discretionary fees (charges a carrier remits pursuant to regulatory action but collects at its discretion from consumers). Second, the Commission suggests the distinction between government mandated and non-mandated charges could be based on whether the amount is remitted directly to a governmental entity versus charges that go directly to “the carrier’s coffers”.

³ Consumer comment to the Missouri Public Service Commission in response to an article in the *Kansas City Star*. Comment No. P200400279. May 3, 2004.

⁴ Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking. *In the Matter of Truth-in-Billing Format and National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*. FCC 05-55. Para. 23.

The MoPSC suggests the first option represents a more accurate description of mandated and non-mandated charges. However, because in certain instances carriers are allowed to retain a portion of the amounts collected from customers to cover administrative charges, the MoPSC suggests “mandated” charges be defined as amounts that are collected directly from customers and remitted, less any allowable cost recovery for administering the surcharge, to federal, state or local governments. Charges that are allowed by regulatory action, but for which recovery is discretionary should not reflect that those charges are governmentally mandated. Carriers have the option to pass these charges on to consumers and consumers should be informed that recovery of the charges is authorized by law, but is not mandated. Further, in some instances, carriers have the option of determining whether, how and how much of the charge to recover from customers.⁵ For these types of charges, the carriers should be required to disclose, in easily understandable terms, the method or formula used to calculate the customer surcharge.

If the Commission continues to allow line item surcharges for charges other than those mandated or allowed by government entities, such a distinction between mandated and non-mandated necessarily would create a third category of charges – those surcharges that carriers add to recover “cost of business” charges. “Cost of business charges” include such things as regulatory assessment fees, cost recovery charges, administration fees and various other labels. The MoPSC asserts that for this category of services, carriers must be required to provide clear, full and meaningful disclosure of “cost of business” charges at the time of the execution of a service agreement between the carrier and the customer or at the time the customer otherwise contracts with the company, but in any event, prior to the date service is initiated.

Under the Commission’s second option, carriers could label charges that contribute to its “coffers” as non-mandated government charges. The MoPSC suggests that charges that

⁵ *Universal Service Order*, 12 FCC Rcd at 9210-11, para. 853.

contribute directly to the carrier's bottom line should not bear any relationship to regulatory fees and should not present the appearance of being a governmental charge, even though not necessarily represented as mandated.

In addition to seeking input as to the appropriate distinction in the definition of "mandated" and "non-mandated," the Commission asks if separating government mandated charges from all other charges satisfies its goals of providing consumers access to accurate, meaningful information in a format they can understand and also providing consumers with clear, well-organized and non-misleading information so they may reap the advantages of competitive markets. The short answer is no, separating government mandated charges from all other charges does not satisfy the goal of providing consumers access to accurate, meaningful information.

The Commission also seeks input as to whether it is misleading for carriers to include expenses such as property taxes, regulatory compliance costs and billing expenses in line items labeled "regulatory assessment fees" or "universal service connectivity charge." Yes, it is misleading to include expenses in line items labeled "regulatory assessment fees."

As discussed in more detail below, in order to satisfy both of these questions, customers must be provided with clear and full disclosure of all rates, especially discretionary rates such as "regulatory assessment fees." In a best case scenario, such line item charges cause confusion. In the worst case scenario, such line item charges are misleading and tend toward questionable marketing practices.

The MoPSC suggests line item fees and surcharges make it difficult for consumers to comparison shop for telecommunications services and allow carriers to offer low per/minute or monthly fixed rates, while recovering various costs in surcharges and fees that may not be

disclosed during advertising campaigns or marketing conversations unless the consumer asks the appropriate questions. As another Missouri consumer wrote in a comment to the MoPSC, “From my limited experience it [having added charges included in the price of service] would be most helpful both in understanding current billings, and doing comparative shopping.”⁶

To address this concern, the MoPSC initiated a rulemaking proceeding to outline requirements for the application of monthly charges and taxes for telecommunications services. Throughout the process of this rulemaking, it has become evident that rules were necessary to provide guidance for labeling line items and for requiring clear disclosure of charges to customers. Such disclosure and clarity is fundamental to providing consumers with adequate information in an increasingly competitive telecommunications market. Therefore, to the extent separate line items are permitted, the MoPSC recommends that government mandated charges be placed in a separate and distinct section of the consumer bill. Those services designed to recover the carrier’s costs of doing business must not be misleadingly portrayed as governmentally required or sanctioned charges. Such charges should be prominently displayed in a section of the bill indicating those charges are discretionary charges that are not required or sanctioned by any government entity. Once again, the goal of any truth-in-billing rules or modifications to existing rules should be to provide the consumer with adequate information to make informed decisions related to telecommunications services.

II. Standardized Labeling

At paragraph 44, the Commission asks if the labeling of categories of charges should be subject to national uniformity and what role states should have with respect to labeling and determining what labels and descriptions are misleading. While in theory, unified labeling of

⁶ Consumer comment to the Missouri Public Service Commission in response to an article in the *Kansas City Star*. Comment No. P200400280. May 3, 2004.

services or categories of services would provide some clarification, the carriers in Missouri have testified in the state USF rulemaking process that in practice, carrier billing system limitations do not allow for “uniform” labeling of services or categories of services. As previously stated, the truth-in-billing rules already require all charges to be clear and conspicuous. Yet, some carriers use similar nomenclature for recovery of what appears to be similar charges or services. For instance, an ILD Teleservices, Inc. bill reviewed by MoPSC staff contains the following “miscellaneous” charges for one telephone line: Universal Service Fund: Jan 16 \$1.27; USF Carrier Administrati: Jan 16 \$1.03; Universal Service Fund: Jan 22 \$.89; USF Carrier Administrati: Jan 22 \$.83; Universal Service Fund: Jan 30 \$1.46; USF Carrier Administrati: Jan 30 \$1.13; Universal Service Fund: Feb 7 \$1.66; USF Carrier Administrati: Feb 7 \$1.24. There is no clear description of these apparently similar charges, no explanation as to why each charge appears multiple times and no explanation as to why each charge is a different amount than the previous time period. This example suggests that even “uniform” or “similar” labeling will not alleviate consumer confusion. Again, the MoPSC recommends that to the extent separate line item surcharges are allowed, carriers should be required to provide consumers with clear description and disclosure of charges.

III. Preemption of Inconsistent State Regulation

In the FNPRM, the Commission tentatively concludes that it should preempt state regulation of carriers’ billing practices and should reverse its prior pronouncement that states may enact and enforce more specific truth-in-billing rules. Under this tentative conclusion, states may only enforce their own generally applicable contractual and consumer protection laws. The MoPSC asserts that the Commission should not preempt state rules governing billing practices. Such a broad policy change will remove state discretion to adopt billing rules

addressing consumer and policy issues that arise in the intrastate jurisdiction. Further, if the Commission adopts its tentative conclusions, it could potentially ban even innocuous billing practice rules designed to protect consumers. Therefore, the MoPSC stresses that states should continue to maintain authority to promulgate rules governing carriers' billing practices to the extent that those rules do not conflict with Commission rules.

IV. Summary

In summary, the MoPSC recommends the Commission define "mandated" charges as those charges a carrier is required to collect directly from customers and remit to federal, state or local governments. The MoPSC further recommends "non-mandated" charges be defined as those charges that are authorized by law but not mandated. Additional surcharges designed to recover the carriers cost of doing business should be prominently displayed and should clearly indicate that such charges are not authorized or mandated by any governmental entity. Further, carriers should be required to provide clear, full and meaningful disclosure of discretionary charges prior to the date service is initiated.

Since "uniform" labeling may not alleviate consumer confusion, the MoPSC recommends that to the extent separate line item surcharges are allowed, carriers should be required to provide consumers with clear description and disclosure of charges. As previously stated, the MoPSC maintains that the top priority for any changes to the truth-in-billing rules should be to provide consumers with the information needed to make informed decisions related to telecommunications services and choices.

With respect to preemption of inconsistent state regulation, the MoPSC affirms that states should continue to maintain authority to promulgate rules governing carriers' billing practices to the extent that those rules do not conflict with Commission rules. If the Commission preempts

state regulation, it should clearly explain the Commission's authority to preempt state authority over intrastate charges and billing practices.

Finally, the MoPSC suggests the Commission clearly make its truth-in-billing rules equally applicable to CMRS providers, interexchange carriers and/or local telephone companies.

Respectfully submitted,

Natelle Dietrich
Regulatory Economist

Marc D. Poston
Senior Counsel

Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8701 (Telephone)
(573) 751-9285 (Fax)